

### **REMARKS**

Applicants thank the Examiner for the thorough examination given the present application.

#### **Status of the Claims**

Claims 1-4 and 7 will be pending in the above-identified application upon entry of the present amendment. Claim 1 has been amended by incorporating the subject matter of claim 5. As such, claim 5 has been cancelled herein. Thus, no new matter has been added. Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

#### **Priority under 35 U.S.C. § 119**

Applicants thank the Examiner for acknowledging Applicants' claim for foreign priority under 35 U.S.C. § 119 and receipt of the certified priority document.

#### **Issues under 35 U.S.C. § 103(a)**

1) Claims 1-4 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fukuoka et al. '268 (US 5,210,268).

2) Claims 1-4 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tojo et al. '210 (US 6,262,210) in view of Fukuoka et al. '268.

Applicants respectfully traverse. Reconsideration and withdrawal of these rejections are respectfully requested based on the following considerations.

#### **Legal Standard for Determining Prima Facie Obviousness**

MPEP 2141 sets forth the guidelines in determining obviousness. First, the Examiner has to take into account the factual inquiries set forth in *Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), which has provided the controlling framework for an obviousness analysis. The four *Graham* factors are:

- (a) determining the scope and content of the prior art;

- (b) ascertaining the differences between the prior art and the claims in issue;
- (c) resolving the level of ordinary skill in the pertinent art; and
- (d) evaluating any evidence of secondary considerations.

*Graham v. John Deere*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966).

Second, the Examiner has to provide some rationale for determining obviousness. MPEP 2143 sets forth some rationales that were established in the recent decision of *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007). Exemplary rationales that may support a conclusion of obviousness include:

- (a) combining prior art elements according to known methods to yield predictable results;
- (b) simple substitution of one known element for another to obtain predictable results;
- (c) use of known technique to improve similar devices (methods, or products) in the same way;
- (d) applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (e) “obvious to try” – choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success
- (f) known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;
- (g) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

As the MPEP directs, all claim limitations must be considered in view of the cited prior art in order to establish a *prima facie* case of obviousness. *See* MPEP 2143.03.

#### *Distinctions over the Cited References*

As amended, claim 1 recites the subject matter of claim 5, which the Examiner considers to be allowable subject matter. As such, the rejections above are rendered moot.

### **Double Patenting**

Claims 1-4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of Fukuoka et al. '268 (page 8 of the outstanding Office Action). Applicants respectfully traverse.

As discussed above, claim 1 has been amended to incorporate the subject matter of claim 5, which was not included in this rejection. As such, Applicants respectfully request that this rejection be withdrawn.

### **Allowable Subject Matter**

Applicants acknowledge the indication of allowable subject matter of claim 5. Applicants have incorporated the allowable subject matter of claim 5 into independent claim 1. All pending claims ultimately depend from claim 1. As such, all pending claims are believed to be directed to allowable subject matter. Therefore, Applicants respectfully submit that this application is now in condition for allowance. An early reconsideration and Notice of Allowance are respectfully requested.

### **Conclusion**

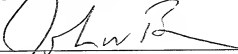
All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Registration No. 58,258, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: OCT 15 2010

Respectfully submitted,

By 

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